**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

**THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929**

**MFA.No. 1114 of 2001(C)**
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**OPMV.1275/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA**
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**APPELLANT - 3RD RESPONDENT:**
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**THE ORIENTAL INSURANCE CO. LTD.,**
**BRANCH OFFICE, KOTHAMANGALAM.**

**BY ADV. SRI.P.V.JYOTHI PRASAD**

**RESPONDENTS - PETITIONERS & RESPONDENTS:**
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1. **SAJAN JOSEPH, BLAYIL PUHENPURA HOUSE,**
   **BOOTHATHANKETTU P.O., CHENGARA.**

2. **K. CHERIYAN DAVID, VII/424, JULIE DALE**
   **P.O. MALA, PATTAMBI.**

3. **ANILKUMAR @ KUTTAN, S/O. THANKAPPAN,**
   **MEAPPURATH HOUSE, PINDIMINA KARAYIL**
   **KOTHAMANGALAM.**

4. **JAMES AUGUSTINE, MANAKAL HOUSE,**
   **VAZHITHALA, THODUPUZHA.**

5. **JAYAN NARAYANAN, S/O. UNNIYATHI,**
   **KURUPPUPARAMBIL HOUSE,**
   **BOOTHATHANKETTU P.O., KOTHAMANGALAM.**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/06/2007 ALONG WITH M.F.A. NO.1135 OF 2001, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

# K. PADMANABHAN NAIR, J.

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**M.F.A. NO. 1114 OF 2001**
**AND**
**M.F.A. NO. 1135 OF 2001**

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**Dated this the 7th day of June, 2007**

**J U D G M E N T**

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These two appeals are filed by the Insurer in O.P(MV) Nos.1275 and 1276 of 1997 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha. The challenge in these appeals is regarding the finding of negligence, quantum of compensation and also the liability of the appellant-Insurer to pay the compensation awarded. Parties will be referred to as arrayed in both the Original Petitions. Petitioners filed two Original Petitions claiming compensation alleging that they sustained injuries in a road traffic accident. It was averred that at about 2.30 p.m. on 16.3.1997 petitioner in O.PMV) No.1276 was riding a motor cycle bearing Reg. No.KLI-5789 in which the petitioner in the other O.P. was a pillion rider. When the motor cycle reached a place called Pindimana another motor cycle bearing Reg. No.KL-4/986 driven by the second respondent in both the petitions came in a rash or

negligent manner from the rear side and hit against the vehicle in which the petitioners were travelling. It was averred that due to the impact of the hitting, petitioners sustained injuries. So they claimed compensation. First respondent in the Original Petitions raised a contention that he transferred the vehicle to the 5th respondent on 8.12.1996. Second respondent did not file any written statement. The Insurer raised a contention that the insurance policy was issued in the name of one Cherian David, whereas the original owner at the relevant time was one Mr.Jaya Narayanan. It was contended that since the policy was issued not in the name of the owner of the vehicle it is a void one and the Insurer is not liable. Negligence alleged and the quantum of compensation were also denied.

2. The Tribunal found that the accident occurred due to the negligence of the second respondent. Petitioner in O.P (MV) No.1275 of 1997 was found entitled to get a compensation of Rs.45,000/- and the petitioner in O.P(MV) No.1276 of 1997 was found entitled to get a compensation of Rs.16,000/-. Overruling the objections raised by the Insurer,

the Tribunal directed the Tribunal to pay the compensation awarded. Challenging those findings, these appeals are filed.

3. Shri P.V. Jyothi Prasad, learned counsel appearing for Insurer, has strenuously argued before me that the findinga of the Tribunal regarding negligence, quantum of compensation and also the liability of the Insurer are illegal and perverse. It is argued that the finding of the Tribunal that the accident occurred due to the negligence of the second respondent, rider of the offending vehicle, is unsustainable. It is argued that there was collusion between claimants, drivers and owners of the vehicles. It is argued that the accident occurred due to the negligence of the driver of motor cycle KLI-5789. It is argued that the specific case put forward by the petitioners in the O.Ps. was that at the time of accident second respondent was riding motor cycle No.KL-4/986 which came from rear side and hit against the motor cycle in which the petitioners were travelling. P.Ws.1 and 2 gave evidence and examined an independent witness to prove the negligence. Apart from cross-examining P.W.1, the Insurer did not adduce any evidence. The finding of the Tribunal that

the accident occurred due to the negligence of the second respondent is only to be confirmed.

4. Petitioner in O.P(MV) No.1275 of 1997 sustained a fracture to the transverse L5 vertebra. He adduced evidence to show that he was having permanent disability by examining P.W.3, Orthopaedic Surgeon. The Tribunal fixed the permanent disability at 5% and found that the multiplier applicable is 18. The Tribunal found that the petitioner is entitled to get Rs.16,200/- towards disability. For pain and suffering, Tribunal awarded a compensation of Rs.12,000/-. For inconvenience and discomforts caused, Tribunal awarded a sum of Rs.5,800/-. The Tribunal awarded Rs.6,000/- towards compensation for loss of earning, Rs.1,500/- towards transportation to hospital. Rs.2,500/- towards medical expenses and Rs.1,000/- towards bystanders expenses. All the amount of compensation awarded under different counts are reasonable.

5. Petitioner in O.P(MV) No.1276 of 1997 sustained fracture to the clavicle. Tribunal awarded compensation of Rs.1,500/- towards loss or earning, Rs.1,000/- towards

transportation to hospital, Rs.500/- towards medical expenses, Rs.8,000/- towards pain and suffering and Rs.5,000/- was awarded towards discomforts and inconvenience caused to the petitioner. The Tribunal awarded a total amount of Rs.16,000/- as compensation to the petitioner. I do not find any reason to interfere with the compensation awarded in that case also.

6. The most important contention raised by the learned counsel for the Insurer is that the Tribunal went wrong in fastening the liability on the Insurer. It is argued that on the date of the accident the registered owner of the offending vehicle was not possessed of a valid policy and policy was issued in the name of Cherian David and it was a void policy. Evidence shows that originally Cherian David was the owner. He sold the vehicle to the 5th respondent and ownership was transferred as per RC Book dated 8.12.1996. In spite of the transfer, an application for policy was filed and policy was issued on 20.12.1996, in the name of Cherian David who was the previous owner. Details of the policy would show that the same was issued for vehicle No. KL-4/986. So the vehicle

involved in the accident was having a valid policy of insurance on the date of accident. It is true that in the policy name of previous owner was written. It is to be noted that the transfer of ownership was effected on 8.12.1996. The Insurer had no case that the vehicle was not covered by a valid policy for that period also. Learned counsel for the Insurer has argued that the insured has a duty to produce the RC Book and other particulars and get a policy issued in his name. It is argued that for the purpose of claiming compensation policy was again issued. I do not think that it is correct. The Insurer has also a duty to verify the particulars like ownership, etc., of a vehicle before it issues a policy. So it would appear that at the time of renewal of policy, copy of the previous policy was given to the Insurer and due to an inadvertent mistake, the name of the previous owner was written. Merely because the Insurer committed a mistake while writing the name of the previous owner, it is not possible to hold that the policy issued is void and the same is bad in respect of the vehicle for which the policy was issued. So a duty is cast upon the Insurer to verify the ownership of the vehicle. Hence I do not think it

just and proper to exonerate the Insurer from the liability on a technical ground. The finding of the Tribunal that the Insurer is liable to pay the compensation awarded is legal and correct and the same does not call for any interference. So, the appeals are only to be dismissed.

7. In the result, the appeals are dismissed.

Civil Miscellaneous Petition Nos.7876 and 7952 of 2001 will stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

**K. PADMANABHAN NAIR, J.**

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**M.F.A. NO. 1114 OF 2001**
**AND**
**M.F.A. NO. 1135 OF 2001**

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**J U D G M E N T**

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**7TH JUNE, 2007**